

Sample Script:

Insert sample script text here.



Bankruptcy

Bankruptcy Resource Guide

OBJECTIVES

- ✓ Become familiar with Bankruptcy and how it affects Child Support
- ✓ Demonstrate understanding of the Bankruptcy Resource Guide by completing the Exercise

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Bankruptcy

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Bankruptcy Basics

Bankruptcy is the legal action to:

- Eliminate debt
- Get a fresh start



Child Support obligations cannot be discharged or modified in Bankruptcy.

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Notes: Debtor is the obligor in child support.

For certain debtors

All debts may be discharged (eliminated)

All creditors may not be paid in full

The legal basis for bankruptcy is Title 11 of the United States Code, called the Bankruptcy Code



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Bankruptcy Basics

Types of bankruptcy most often seen in child support cases

- Chapter 7 Liquidation
- Chapter 9 Municipality
- Chapter 11 Business Reorganization
- Chapter 12 Family Farmer
- Chapter 13 Individual Reorganization

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Each chapter has specific qualifications and consequences.



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Bankruptcy Basics

Steps in the bankruptcy process

- Debtor completes voluntary bankruptcy petition
- Voluntary Petition filed in federal bankruptcy court
- Court trustee appointed
- Timeframes established
- Debts discharged
- Individual gets a fresh start



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Definition: Voluntary Petition – A formal written request presented to the bankruptcy court. A debtor may or may not have an attorney. Bankruptcy can relieve only certain debts.



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Bankruptcy Basics

Voluntary Petition triggers Automatic Stay

Creditors cannot:

- Take any action to recover a debt
- Enforce a debt or judgment against the debtor
- Repossess property or issue a Notice to Withhold
- Create a property lien
- File an Abstract of Support Judgment or record a judgment
- Contact the debtor concerning any payments

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Definition: Stay – Stop, defer, postpone, delay, or suppress certain action(s)

Prohibited actions to recover a debt include: issuance or employment of process; Starting a new law suit; Completing an existing law suit

Automatic Stay takes effect under any of the bankruptcy chapter filings

Section 362 of the Bankruptcy Code is called the Automatic Stay


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Bankruptcy Basics

Child Support Obligations are not subject to an Automatic Stay

LCSA can:

- Establish or modify orders for support in court proceeding or administrative processes
- Ask debtor's attorney for a Notice to Withhold for on-going support



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Exception – LCSA may still establish or modify orders for support in court proceeding or administrative processes

Exception – LCSA can ask debtor's attorney how actions may proceed and whether there is an objection to issuing a Notice to Withhold. for on-going support. Get any agreement in writing.


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Bankruptcy Basics

Child support debt also allows actions to:

- Establish paternity
- Establish a child support order
- Collect support that is not property of the estate
- Take criminal action against the debtor



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In Chapter 7 you can continue to collect child and spousal support and arrears.

In Chapter 13 current support can be collected by a Notice to Withhold, not arrears.

Civil Contempt proceeding to enforce the payment of debt may be a violation of the Automatic Stay and recent court decisions have indicated that beginning a criminal action may also be a violation. Consult with your LCSA attorney for clarification



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Bankruptcy Basics

What is Property of the Estate?

Upon filing a Voluntary Petition, Property of the Estate includes:

- All debtor's assets and debts
- All potential earnings
- Lottery proceeds
- Tax refunds
- All other sources of income during the bankruptcy



Only limited exemptions to the Property of the Estate allowed

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Only property of the estate is subject to the Automatic Stay

Two types of exemptions available to the debtor. Debtor chooses one.

Turn to the Appendix to review the two types:

California Code of Civil Procedure §703.140 allows the exemption of the following property:

1. \$15,000 in real or personal property used as a homestead;
2. \$2,400 equity in a motor vehicle;
3. Equity in household furnishings, not to exceed \$400 per item (no maximum limit);
4. \$1,000 equity in jewelry;
5. \$800 plus any unused amount of the \$15,000 of homestead, in any other property (real or personal)
6. \$1,500 in tools of trade (including books, implements, vehicles, tools, etc.);
7. Any unmaturred life insurance policy;
8. \$8,000 in any dividend or interest under a life insurance contract;
9. Health aids;
10. The debtor's right to receive the following:
 - Social Security, Unemployment Insurance Benefits (UIB), or public assistance;
 - Veterans' benefits;
 - Disability or UIB;
 - Alimony, child support or maintenance;
 - Payments under disability or death benefits from pension, profit-sharing, or



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Bankruptcy Basics

- **Use a Proof of Claim for:**
 - Chapter 11 case
 - Chapter 13 case
 - Chapter 7 case, if requested by the trustee
- **Submit:** Proof of Claim,
Support calculation, and
Copy of the judgment supporting the claim
- **Child support obligations are priority claims**

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A Proof of Claim is a document filed with the Bankruptcy Court and the Bankruptcy Trustee evidencing an obligation or debt. It must be signed under penalty of perjury, and evidence of the debt (generally a child support judgment or order, or administrative order) must be attached. The Proof of Claim must be filed with the court in order for payment under the bankruptcy to be received.



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Bankruptcy Basics

Not usually affected by bankruptcy

- Pending or active criminal actions
- Civil Contempt – Payment vs. Punishment
- Tax intercept / Lottery proceeds

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Criminal action such as filing a California Penal Code Section 166 (a)(4) or Section 270. misdemeanor filing for failure to provide for a child.

If a debtor stops paying child support ordered in the terms and conditions of the debtor's probation, a violation of probation will not be stayed by the bankruptcy. The debtor must arrange to make the payments or is subject to incarceration.

Certain actions or proceeds are not generally property of the estate, or the certification of arrears pre-dated the filing. LCSCA is a secured creditor. Do not release Tax Intercept to debtor

An exception may occur in a Chapter 13, after the first intercept as arrears are certified in November for the following tax year. As a subsequent certification may be viewed as an action in violation of the stay, the case would have to be reviewed by the unit attorney for a determination. In essence, any certification which precedes the filing will be authorized, but subsequent certification (post filing of bankruptcy) is a potential problem. Upon the request of the trustee in bankruptcy, release tax intercepts for years subsequent to the initial filing. However, often the debtor exempts the tax return under the appropriate exemption statute. In those cases, the tax intercept is not property of the estate and you can collect the tax intercept.



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Bankruptcy Basics

Establishment of Modification of Support or Paternity

- Establishment of paternity, support, or health insurance orders are never stayed
- An action to modify support is not affected by filing for bankruptcy

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Bankruptcy Basics

What does it mean to have bankruptcy discharged?

- The debtor (obligor) is entitled to discharge (release/eliminate) certain kinds of debts
- Child or spousal support is non-dischargeable. Child support debt survives bankruptcy.

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Definition: Discharge – The release of a debtor from all of the debts which are provable in bankruptcy, except such as are excepted by the Bankruptcy Code.



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Bankruptcy Basics

What happens when bankruptcy is dismissed?

- It is as if the case never happened
- All enforcement activities may resume

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Chapter 7 Bankruptcy: Liquidation



Chapter 7 Bankruptcy: Liquidation

Debtor (obligor) petitions court to liquidate debtor's assets and debts

Court exempts debtor's assets from liquidation and discharges debts

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Chapter 7 Bankruptcy: Liquidation

No Asset Chapter 7

- Most common
- Debtor has no assets to be distributed to debtors
- No "Proof of Claim" needed
- Discharge completed in about 4 months



Asset Chapter 7

- Additional assets available for disbursement to creditors
- Assets are beyond those exempted by debtor
- LCSA files a Proof of Claim

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Assets are retained by the debtor while debts are eliminated.



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Chapter 7 Bankruptcy: Liquidation

Chapter 7 Impact on Child Support

Do:

- Continue to collect child and spousal support and arrears

Do Not:

- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment
- If debtor requests a release of lien, refer debtor to bankruptcy court
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

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A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered “property,” submitting to SLMS before the bankruptcy filing makes the LCSA a “secured creditor” and the debtor would have no equity in the “property.” The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under no obligation to, release the license.



Bankruptcy

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Chapter 7 Bankruptcy: Liquidation

Chapter 7 Bankruptcy: Liquidation

Notice to Withhold

- Cannot Notice to Withhold after Voluntary Petition
- No need to modify the Notice to Withhold

Credit reporting is allowed

- Debts are non-dischargeable
- Reporting is not a violation of the stay

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Draw attention to the suggestion box in the Guide. Some employers won't honor the Notice to Withhold in a Chapter 7. Wait until the bankruptcy is discharged and consider resending the Notice to Withhold with information that child support is not dischargeable in bankruptcy.



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Chapter 9 Bankruptcy: Municipality

Chapter 9 Bankruptcy: Municipality

Municipalities, governmental entities, and utilities

- liquidation (railroads)
- reorganization (Orange County)



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to the County of Orange, LCSAs never saw a Chapter 9



Bankruptcy Resource Guide

Bankruptcy Resource Guide

Chapter 9 Bankruptcy: Municipality

Chapter 9 Impact on Child Support

- LCSA unable to cash municipality's check – first sign of a Chapter 9
- Direct obligor to file Proof of Claim with the court
- Do not contact the municipality (debtor) concerning the next payment
- Do not Notice to Withhold once petition is filed

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Since the LCSA did not actually receive any money, the NCP (obligor) cannot be credited for the check the LCSA received. The LCSA is not the creditor of the municipality, the NCP is.



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Chapter 11 Bankruptcy: Business Reorganization



Chapter 11 Bankruptcy: Business Reorganization

- Businesses and individuals reorganize debts over \$1 million
- Voluntary Petition lists assets and liabilities
- Plan of Reorganization required
- Creditors paid in full or pro-rata share over time (3-5 years)

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Bankruptcy

Bankruptcy Resource Guide

Chapter 11 Bankruptcy: Business Reorganization

Chapter 11 Impact on Child Support

- LCSA unable to cash municipality's check – sign of a Chapter 11
- Direct obligor to file Proof of Claim with the court
- Do not contact the business (debtor) concerning the next payment
- Same as a Chapter 13 filing

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Circumstances similar to Chapter 9 bankruptcy: LCSA did not actually receive any money. NCP (obligor) cannot be credited for the check the LCSA received. The LCSA is not the creditor of the business, the NCP is.



Bankruptcy

Bankruptcy Resource Guide

Chapter 11 Bankruptcy: Business Reorganization

Chapter 11 Impact on Child Support

Do Not:

- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment. If debtor requests a release of lien, refer debtor to bankruptcy court
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

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A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered “property,” submitting to SLMS before the bankruptcy filing makes the LCSA a “secured creditor” and the debtor would have no equity in the “property.” The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under not obligation to, release the license.


Bankruptcy Resource Guide

Bankruptcy

Chapter 11 Bankruptcy: Business Reorganization

Chapter 11 Bankruptcy: Business Reorganization

- Notice to Withhold is not allowed
- Credit reporting is allowed
- Debts are non-dischargeable



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Reporting is not a violation of the stay.

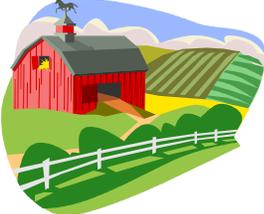


Bankruptcy

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Chapter 12 Bankruptcy: Family Farmer

Chapter 12 Bankruptcy: Family Farmer



- A family farmer with regular income
- Same as a Chapter 13 bankruptcy for child support actions

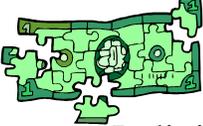
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Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization



Chapter 13 Bankruptcy: Individual Reorganization

- Individual or married debtors with Regular income
- Unsecured debts less than \$250,000
- Secured debts less than 871,550
- Voluntary Petition lists assets and liabilities
- Plan to reorganize debts
- Repayment plan lasts 3-5 years
- Debtor pays trustee who pays creditors

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The plan to reorganize debts is called in statute “Plan of Reorganization” in Chapter 11, but in Chapter 13 simply “Plan”



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Impact on Child Support

LCSA does:

- File a Proof of Claim
- Attach child support judgment or order
- Attach pay records or audits

Debtor may:

- Contest Claim amounts
- Propose not paying child support debt –

CONTACT YOUR BANKRUPTCY ATTORNEY



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Property of the estate includes earnings and income received by the debtor during a Chapter 13 bankruptcy as these are necessary to conduct the wage earner plans. Most commonly seen by LCSA.

In Chapter 13 bankruptcy cases in which the obligor has unpaid arrears with no ongoing child support, the obligor will assume that all debts have been paid in full once the amount of the proof of claim has been paid and the Chapter 13 discharged. However, if the Proof of Claim includes only monies owed up to the filing date of the Chapter 13 bankruptcy, interest will continue to accrue on the unpaid debt throughout the pendency of the bankruptcy. Therefore, the obligor may have an unpaid balance at the end of the bankruptcy.

To avoid this situation, provide the Bankruptcy Trustee with information and documentation that child support debt accrues at 10% interest. The Trustee can input the accruing interest amount into the Plan and adjust the payments to provide for the continuation of the 10% simple interest. As a result, the total amount of child support arrears and interest will be paid in full when the Chapter 13 is discharged. The Trustee may request the code sections. Refer the Trustee to the Code of Civil Procedure, Sections 695.221 and 685.010.

In very rare cases, the Chapter 13 Plan will order that interest cease to accrue during the pendency of the bankruptcy. The LCSA attorney is responsible for objecting to this at the time the Plan is proposed.



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Impact on Child Support

Do Not:

- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment. If debtor requests a release of lien, refer debtor to bankruptcy court.
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

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A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered "property," submitting to SLMS before the bankruptcy filing makes the LCSA a "secured creditor" and the debtor would have no equity in the "property." The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under no obligation to, release the license.



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Notice to Withhold

Current support only (contact debtor's attorney)

Not allowed:

- for arrears - Arrears paid by trustee pursuant to Proof of Claim
- after Voluntary Petition filed

If debtor contests the Notice to Withhold and refuses to pay current child support, criminal action may be the only resort

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Debtor's wages may be part of the estate



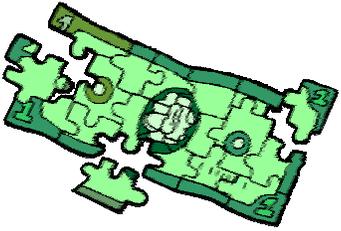
Bankruptcy

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Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Bankruptcy: Individual Reorganization

- Credit reporting is allowed
- Debts are non-dischargeable



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 **Department of Child Support Services**



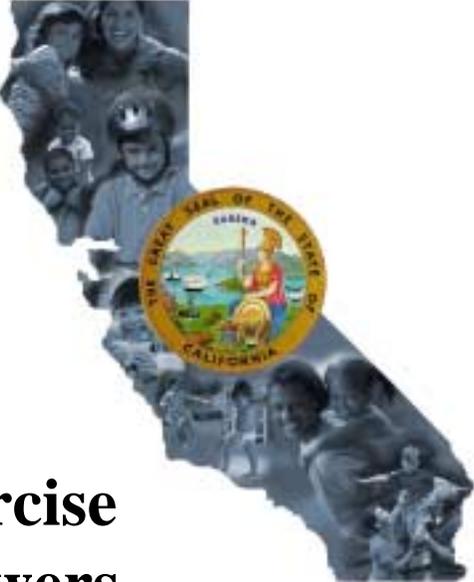
Exercise

Bankruptcy Resource Guide

Sample Script:

Please take a few minutes to work on the exercise on the last page of your guide. Use the Guide to look up your answers if you are not certain whether or not you can take the action described for each of the chapters of bankruptcy that affect child support. If it is necessary to consult an attorney, place the letter A in the box. We will discuss the answers in a few minutes.

 **Department of Child Support Services**



**Exercise
Answers**

Bankruptcy Resource Guide

Sample Script:

Insert sample script here.

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
You can continue to collect child support.	Yes			Yes
You can continue to collect arrears.	Yes			
Release a license Discuss case options				
Once the Petition in Bankruptcy is filed, you cannot do a wage assignment.		Yes	Yes	Yes
You must release a property lien that was filed prior to the debtor's filing for bankruptcy.				

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
Credit reporting is allowable.	Yes	Yes	Yes	Yes
You cannot file or record an Abstract of Judgment.	Yes	Yes	Yes	Yes
You cannot negotiate an SLMS stipulation or inquire about payment on arrears.	Yes	Yes	Yes	Yes
You cannot contact the debtor to find out when the next payment will be made.	Yes	Yes	Yes	Yes
If the debtor requests a lien be lifted, refer the debtor to the bankruptcy court.	Yes	Yes	Yes	Yes

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
Repossessions are allowed.				
You can continue action to establish paternity.	Yes	Yes	Yes	Yes
You can use a Civil Contempt proceeding to enforce the payment of debt.	A	A	A	A
An action to modify support is not affected by filing of a bankruptcy.	Yes	Yes	Yes	Yes

Department of Child Support Services

Questions ?

Thank You

Bankruptcy Resource Guide

Sample Script:

Are there any questions regarding bankruptcy and how it affects child support cases?

Note: New federal law effective October 17, 2005 applies to bankruptcies filed on or after that date.

If there are no questions, I thank you for your attention and participation ...